IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 5574 of 2006
Date of decision : 26.3.2007

Kuldeep Singh

...Petitioner.

Versus

Gurjit Singh & Ors.

...Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Harsh Aggarwal,Advocate
for the petitioner.

Mr. Malkeet Singh, Advocate
for the respondents.

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VINOD K. SHARMA, J. (ORAL)

The present revision petition has been filed against the order dated 2.9.2006 passed by the learned Addl. Civil Judge (Sr. Divn.), Balachaur vide which on the objections filed by the third party objector respondent herein, the learned trial Court has framed an issue to the effect that "Whether objector Pakhar Singh Chahal is bona fide purchaser ?OPA

It is not in dispute that the objector Pakhar Singh Chahal purchased the property during the pendency of the suit for specific performance which stood decreed and appeal was pending against the said order. The petitioner by relying upon the judgment of this Court in the case of ***Swaran Singh Vs. Udham Singh 1994(2) R.R.R. 99*** contended that plea of bona fide purchaser was not available to the transferee during the pendency of the suit. Though, the learned executing Court observed that

it was in agreement with the law laid down but in spite of this, proceeded to frame issue of bona fide purchase on the basis of certain assertions made by the objector with regard to the purchase made by him.

The learned counsel for the petitioner contends that the impugned order cannot be sustained as Rule 102 of Order 21 of the Code of Civil Procedure clearly lays down that Rules 98 and 100 of Order 21 do not apply to pendente lite transfer. He has further placed reliance on the judgment of this Court in the case of ***Jaswant Singh Vs. Ralla Singh and others 2005(2) P.L.R. 681*** to contend that the objection by subsequent purchaser pending litigation are hit by the doctrine of lis pendens and the same are not to be adjudicated upon in a civil suit but have to be disposed of summarily. However, learned counsel appearing for the respondent contended that in the facts and circumstances of the present case question arises whether respondent-objector was misled by the owner of the land to purchase the property, which can only be adjudicated upon only by leading evidence and, therefore, no fault cannot be found in the finding recorded by the learned executing Court. In support of his contention he has placed reliance on a Division Bench judgment of the Hon'ble Kerala High Court in the case of ***Musthafa Vs. Andrews & Anr. 2006(3) RCR (Civil) 647*** to contend that it is always open to the learned executing Court to grant any other benefits available to the objector in terms of section 51 of the Transfer of Property Act, 1882. I have gone through the said judgment. The Hon'ble Kerala High Court has been pleased to hold that the transferee during the pendency of suit is not entitled to challenge the decree on the ground that there was some collusion between the judgment debtor and the decree-

holder. The Hon'ble Kerala High Court merely laid down that it is open to the executing Court to see if any claim on the ground of improvement made by the transferee of property is to be given to him or not. However, in the present case, no such plea was raised and the decree was being resisted merely on the plea of bona fide purchase which does not fall within the purview of the learned executing Court. The learned executing Court, therefore, was wrong in framing the issue and directing the parties to lead evidence. This revision is allowed and the findings recorded by the learned executing Court are set aside and the case is remanded back to the executing Court to dispose of the objections in summary manner.

26.3.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**